

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
)	

COMMENTS OF BT AMERICAS INC.

BT Americas Inc., a wholly owned indirect subsidiary of BT Group plc (“BT plc”) (“BT”), respectfully submits these comments in response to the Commission’s *Public Notice* in the above captioned docket.¹ BT supports the revisions to the FCC Form 499-A instructions proposed by a group of industry participants (the “Industry Group”).² BT is a member of the Industry Group, and submits these comments to urge the Commission to adopt the Industry Group’s proposed revisions. In addition, consistent with the Industry Group’s proposal, BT encourages the Commission to clarify that FCC Form 499-A filers may rely on their customers’ annual certificates for all services that are provided during the calendar year for which the certificates apply.

BT is a UK-headquartered provider of information and communications services both in the UK and global markets, and in the United States. In the U.S., BT provides wholesale

¹ *Wireline Competition Bureau Seeks Comment on Proposed Sample Reseller Certification Language for FCC Form 499-A Instructions*, Public Notice, WC Docket No. 06-122 (re. Aug. 2, 2013) (the “*Public Notice*”).

² Letter from AT&T Services, Inc., BCE Nexxia, BT Americas Inc., CenturyLink, Orange Business Services U.S., Inc., Sprint Corporation, Verizon, and X/O Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed July 26, 2013).

and resale services, holds Section 214 licenses, and employs approximately 2600 people. BT's business focus is on the corporate services sector, providing information communications technology solutions to multi-site, multinational organizations that seek innovative, reliable, and secure communications throughout the world.

I. THE COMMISSION SHOULD ADOPT THE INDUSTRY GROUP'S PROPOSED REVISIONS

BT urges the Commission to adopt the Industry Group's proposed 499-A instruction revisions. The Industry Group's proposed revisions provide the standardized, consistent certificate language sought by the 2012 *Wholesaler-Reseller Clarification Order*,³ and clear guidance to the industry for categorizing their customers' revenue on the Form 499-A.

The *Wholesaler-Reseller Clarification Order* directs the Wireline Competition Bureau to adopt certification language that incorporates the Commission's reseller definition.⁴ The Industry Group's proposals accomplish this goal. The Commission explained that reseller means "a telecommunications service provider that 1) incorporates the purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings."⁵ The Industry Group's proposed revisions satisfy this requirement by expressly including a statement that the purchased services are being incorporated into a reseller's offerings and that the reseller

³ *In Re Universal Service Contribution Methodology, et al.*, Order, 27 FCC Rcd 13780, ¶ 41 (rel. Nov. 5, 2012) (the "*Wholesaler-Reseller Clarification Order*").

⁴ *Id.*

⁵ *Id.* at ¶ 37; *see also id.* at ¶ 34.

contributes to the Universal Service Fund (“USF”), at least in part, on revenues from offerings that incorporate the purchased services.

The proposed revisions also provide guidance on how a wholesale provider can demonstrate a “reasonable expectation” for purposes of its USF reporting. The Industry Group’s proposal implements the *Wholesaler-Reseller Clarification Order*’s conclusion that a filer may demonstrate the necessary “reasonable expectation” either by obtaining a reseller certificate consistent with the above language or by otherwise demonstrating (through reliable proof) such an expectation. It further implements the *Wholesaler-Reseller Clarification Order*’s conclusion that if a filer has not demonstrated this “reasonable expectation,” it is responsible for USF contributions on revenues received from its reseller unless it can demonstrate that the reseller “actually contributed” to the USF on offerings that incorporated the purchased services. These clarifications thus implement the core clarifications adopted in the *Wholesaler-Reseller Clarification Order*.⁶ This guidance permits filers to modify their operating, reporting and financial procedures to ensure compliance with the safe harbor provision, while taking steps to ensure that proper contributions are being made to the Fund.

In sum, the Industry Group’s proposed revisions to the Form 499-A instructions comport with the requirement of the *Wholesaler-Reseller Clarification Order* by incorporating the Commission’s definition of reseller, and also provide Form 499-A filers clear guidance for establishing a “reasonable expectation” to comply with the Form 499-A safe harbor. The Commission should adopt the Industry Group’s proposed revisions.

⁶ See, e.g., *id.* at ¶¶ 4, 6, 37.

II. THE COMMISSION SHOULD CLARIFY THAT CUSTOMER CERTIFICATIONS ARE REQUIRED NO MORE THAN ONCE A YEAR

BT further urges the Commission to clarify that wholesale providers need not continuously update resellers' certifications over the course of the year and, conversely, that resellers may not be required to provide constant updates to certifications it provides to a wholesale provider. Consistent with the Commission's *Wholesaler-Reseller Clarification Order* and historic practice, Form 499-A filers should be permitted to rely on their annual customers certificates for the entire year to which that certificate applies because any new customer services will be confirmed prior to the filer's next annual Form 499-A submission. Resellers should not be required to provide a certification to its wholesale provider more often than once per year during the annual certification process.

The *Wholesaler-Reseller Clarification Order* plainly states that filers must conduct *annual* due diligence as to whether their customers are wholesale providers or resellers immediately before submitting their annual Form 499-A. For example, the Commission states that filers must have "exercised appropriate due diligence to determine whether such revenues are exempt from contributors" before submitting their Form 499-A.⁷ Further, the Commission rejects, for purposes of demonstrating a "reasonable expectation," obtaining customer certificates after submission of a Form 499-A, stating, "holding that such Confirmatory Certificates can satisfy the reasonable expectation standard would diminish the incentive for wholesale providers to conduct due diligence at the proper time, *i.e.*, prior to reporting revenues ..."⁸ And, the

⁷ *Id.* at ¶ 38.

⁸ *Id.* at ¶ 49; *see also id.* (where the Commission rejected XOCS' post-Form 499-A customer certificates "because XOCS obtained the certificates years after the fact and

Commission confirmed that the appropriate period for determining a reasonable expectation “is the period during which a wholesale provider collects and submits the revenue data at issue to USAC.”⁹ The Commission’s annual requirement for conducting this due diligence is also well-known.¹⁰

Since filers must conduct annual due diligence as to their customers’ status, filers should be permitted to rely on the annual reseller certificates for the entire period between such certificates, regardless of any new services added by the reseller during that timeframe. Such an approach strikes the correct balance between the administrative burden imposed on filers to confirm their customers’ reseller status, and the Commission’s interest in ensuring that all eligible contributions are being made to the Fund. Imposing interim or continuous and on-going obligations to update each reseller’s status with each new service acquired over the course of the year would be unduly burdensome on wholesale providers and resellers alike, requiring administrative resources to gather, maintain and report any potential interim change in reseller status. Such constant evaluation and reporting would overwhelm reseller and wholesaler resources, making the simple process of adding, deleting or changing services a cumbersome and unwieldy process. Worse, wholesale providers and their resellers would be required to duplicate this effort immediately before filing their next annual Form 499-A, in order to satisfy language in the instructions directing the wholesale provider to conduct annual due diligence before

thus did not consider the certificates at the time it submitted the 499-A forms, the Confirmatory Certificates could not have played any role in XOCS’s ability to determine at that time whether its customer could be reasonably expected to contribute to the Fund.”).

⁹ *Id.* at ¶ 48.

¹⁰ *Id.* at ¶¶ 6, 14, 29.

submitting its 499-A forms. In addition, setting an obligation to continuously update certificates likely would create customer invoicing disputes and confusion, with wholesalers and resellers claiming any change in the mix of services must immediately result in a reduction in USF contributions. The Commission can avoid this result by adding clarifying language to the Form 499-A instructions.

Allowing filers to rely on their annual Form 499-A submissions is consistent with the Commission's purpose in adopting the reasonable expectation standard. As the Commission explained, "[t]he reasonable expectation standard that the Commission includes in the FCC Form 499-A instructions ensures that wholesale carriers perform an appropriate level of due diligence in determining whether their customers are resellers that will, *or likely will*, contribute directly to the universal service fund."¹¹ In other words, the reasonable expectation standard strikes a balance between the administrative the burden of leaving no stone unturned to ensure that a filer's reseller revenue is correctly categorized for the reporting period, while still requiring diligence efforts on the part of the filer to correct identify what the customer revenue will likely be over the next year. Adopting a requirement that filers continually update their resellers' status during the course of an annual certificate period undermines that balance.

The Industry Group's proposed revisions incorporate this balance into the Form 499-A instructions by stating that filers may rely on "(1) a notification from the customer that the customer is purchasing the service for resale consistent with the annual certificate; or (2) a later certificate covering the purchased service signed by the customer." The Commission should

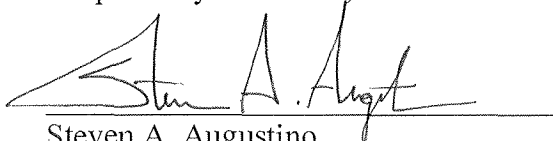
¹¹ *In the Matter of Federal-State Joint Board on Universal Service*, Order, 24 FCC Rcd. 10824, 10825, ¶ 12 (rel. Aug. 17, 2009) (emphasis added).

adopt this revision. The Commission also should strengthen this language by including the following statement immediately thereafter: “The filler may rely on the annual certificate signed by the customer for all services that are provided during the calendar year for which the certificate applies, regardless of whether services were purchased before or after the date of the certificate.” These revisions clarify that filers may rely on annual reseller certificates for the entire year after the certificate is signed, until the next annual certificate is requested, and avoid the issues relating to on-going and continuous updates to update each reseller’s status.

III. CONCLUSION

For the foregoing reason, BT urges the Commission to adopt the Industry Group’s proposed revisions to the FCC Form 499-A instructions, and BT’s proposed language clearly stating that wholesale providers and resellers need not continuously update the reseller’s status over the course of a reporting period, but may rely on their annual Form 499-A due diligence and submissions to categorize customer revenue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Augustino", written over a horizontal line.

A. Sheba Chacko
Senior Counsel and Head, N. Am. Regulations &
Global Telecom Policy – BT Global Services
BT AMERICAS INC.
11440 Commerce Park Drive
Reston, VA 20191

Steven A. Augustino
KELLEY DRYE & WARREN LLP
Washington Harbour
3050 K Street, N.W., Suite 400
Washington, D.C. 20007
Telephone: (202) 342-8400
saugustino@kelleydrye.com

Counsel for BT Americas Inc.

September 6, 2013